IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR

BENCH, JAIPUR.

M/S. J.K. Synthetics Ltd. Vs. Rajasthan Tax Board, Ajmer & Ors.

S.B. Sales Tax Revision No.202/2003

Date of Order ** April 17, 2006

PRESENT

HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. R.B. Mathur for the petitioner.
Mr. M. Rafiq, Sr. Standing Counsel for the respondents-Revenue.

BY THE COURT:

1. This revision is directed against the order of Tax Board dated 31.7.2003 whereby the Tax Board upholding the order of D.C.(Appeals)maintained the penalty under Sec. 78 (5) of the Act which was imposed on the respondent-assessee on the ground that the declaration in form No.ST 18A was not found at the time of checking of the vehicle though the other relevant documents like bill and bilty were found.

2. The respondent-assessee placed an order for purchase of certain items prescribed in purchased order Annex.1 like Catalyst switches, modular slots, AUI/UIP Repeater with 4 UTP ports on M/s. Tata Infotech Ltd., New Delhi and these

goods in question were sent in the vehicle along with the copy of the said purchase order, a certificate issued by respondent-assessee that since the goods in question are of class of goods specified in their registration certificate under the CST Act, 1956, they were not required to furnish form ST-18A as per R.53 of RST Rule 1995 and a certificate of the seller /consignor M/s. Tata Infotech that these goods were not computer items nor computer accessories but were to be used for passing of the signals from one process to another by the respondent-assessee, a manufacturer of white cement. Admittedly, necessary documents like bill and bilty were accompanying with goods in question.

3. Learned counsel for the respondent-assessee contends that the authorities below have erred in imposing the penalty under Sec. 78(5) of the RST Act, 1994 treating the goods in question as electronic goods; whereas the case of the assessee falls within the exception of Rule 53(1)(a)(i) of the Rules, which reads as under:

> ***"(i) who imports any taxable goos as may be notified by State Government for sale; except when the goods are the goods of the classes specified in the certificate of registration under the Central Sales Tax Act, 1956, of the registered dealer purchasing the goods and are purchased for mining or in generation or distribution of electricity***

or any other form of power; or"

4. Mr.Mathur, learned counsel for the petitioner-assessee submits that these switches etc. purchased by the assessee from M/s. Tata Infotech Ltd. are duly CST paid goods and no tax under RST Act was even attracted on their import for being used as part of plant and machinery for passing of signals from one process to another and since the plant and machinery and parts thereof are the goods mentioned in their registration certificate under CST Act, the assessee's case was clearly covered within the exception clause of the Rule 53, quoted above as the goods in question were used for distribution of any other form of power and he submits that even electronic signals passed from one process to another as a link to the plant and machinery could be covered within the scope of this exception clause and, therefore,the assessee was rightly contending before the authorities below that form No.ST-18A was not required. However, without prejudice to this contention of the respondent-assessee, when the assessee insisted upon the compliance with R.53 treating the goods in question as electronic goods within the list of notified goods, the assessee submitted the declaration in form No. ST-18A before the Assessing Authority. He further submits that since none of the documents furnished by the petitioner-assessee have been found to be false or forged, nor any intention to evade tax

under RST Act 1994 can be attributed upon the petitioner-assessee,therefore, the authorities below have erred in imposing the penalty under Sec. 78(5) of the Act.

5. As against this, Mr.Rafiq, learned Sr.Standing Counsel submits that ex-facie these goods in question are electronic goods and even if they are used as part of plant and machinery, none the less the compliance with R.53 was required to be made by the petitioner-assessee and since admittedly form No. ST 18-A was not available at the time of checking, the imposition of penalty is justified and the order of Tax Board deserves to be maintained.

6. Having heard learned counsel, this court is of the view that the present revision petition filed by the petitioner-assessee deserves to be allowed. The goods in question, switches imported by the petitioner-assessee were shown to be used as part of plant and machinery for passing of signals from one process to another vide certificate of M/s. Tata Infotech, a renowned and reputed company manufacturing these goods. The intention of exception clause of R.53(1)(a)(i) quoted above seems to be that when the goods are covered by registration certificate of the assessee, the requirement of furnishing of form No.ST-18A is dispensed with because such a registered dealer is only to ensure the user of goods

in question for the declared purpose. The purpose of R.53 prescribing ST-18A also seems to be only to regulate the import of goods within the State which are taxable to ensure that such goods are properly accounted for and the tax applicable on them upon the taxable event arising in future does not go unpaid. Therefore, where the goods in question are entered in registration certificate and goods are duly accounted for, the purpose of ST-18A stands achieved.

7. The contention of the petitioner-assessee that the goods in question switches imported by the petitioner-assessee on which due CST was charged and paid were used as part of plant and machinery for passing signals from one process to another, are the goods used for generation or distribution of electricity or any other form of power, more particularly for distribution of other form of power (in the form of signals) is also of substance and deserves to be accepted. Even if the goods in question are electronic goods, if they are used as part of plant and machinery and they are used for distribution of any form of power including the signals as aforesaid, there is no reason why the revenue authorities taking a narrow and pedantic approach should be allowed to negativate such contention particularly when they are exercising jurisdiction in penalty proceedings under Sec. 78(5) of the Act. If the

goods in question are prima facie covered by the entries in the registration certificate of a registered dealer and it falls in exception clause of R.53, the insistence of Anti-Evasion Authority on production of form ST-18A would rather defeat the purpose of R.53 rather than sub-serving it. In the present case, not only the aforesaid contention of the petitioner-assessee deserves to be accepted that goods in question were in the exception clause of R.53 but without prejudice to their contention also, the petitioner-assessee submitted the declaration form No.ST-18A although at a belated stage before the Assessing Authority, there is no reason for that also not to be taken as sufficient compliance of the relevant rule and in the considered opinion of this court, it was not a fit case at all for imposition of penalty under Sec. 78(5) of the Act.

8. Consequently, the present revision petition is allowed, the impugned orders of all the three authorities below are set aside. The penalty under Sec. 78(5) of the Act, if paid by the assessee, under the impugned orders, shall be refunded back to the petitioner-assessee with interest in accordance with the provisions of the Act within a period of three months from today. Not order as to costs.

(Dr.VINEET KOTHARI),J.

VS/